

Chapter 3 Financial Institution Loan Originator Licensing Act

Part 1 General Provisions

70D-3-101 Title.

This chapter is known as the "Financial Institution Loan Originator Licensing Act."

Enacted by Chapter 72, 2009 General Session

70D-3-102 Definitions.

As used in this chapter:

- (1) "Administrative or clerical tasks" means:
 - (a) the receipt, collection, and distribution of information common for the process or underwriting of a loan in the mortgage industry; and
 - (b) a communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.
- (2) "Affiliate" shall be defined by the commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (3) "Applicant" means an individual applying for a license under this chapter.
- (4) "Approved examination provider" means a person approved by the nationwide database as an approved test provider.
- (5) "Business as a loan originator" means for compensation or in the expectation of compensation to engage in an act that makes an individual a loan originator.
- (6) "Clerical or support duties" includes after the receipt of an application for a residential mortgage loan:
 - (a) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and
 - (b) communicating with a consumer to obtain the information necessary for the processing or underwriting of the residential mortgage loan, to the extent that the communication does not include:
 - (i) offering or negotiating a residential mortgage loan rate or term; or
 - (ii) counseling a consumer about a residential mortgage loan rate or term.
- (7) "Compensation" means anything of economic value that is paid, loaned, granted, given, donated, or transferred to an individual or entity for or in consideration of:
 - (a) services;
 - (b) personal or real property; or
 - (c) another thing of value.
- (8) "Continuing education" means education taken by an individual licensed under this chapter in order to meet the education requirements imposed by Section 70D-3-303 to renew a license under this chapter.
- (9) "Covered subsidiary" means a subsidiary that is:
 - (a) owned and controlled by a depository institution; and
 - (b) regulated by a federal banking agency.
- (10) "Federal banking agency" means:
 - (a) the Board of Governors of the Federal Reserve System;

- (b) the Comptroller of the Currency;
 - (c) the National Credit Union Administration; or
 - (d) the Federal Deposit Insurance Corporation.
- (11) "Licensee" means an individual licensed under this chapter.
- (12)
- (a) Except as provided in Subsection (12)(b), "loan originator" means an individual who for compensation or in the expectation of compensation:
 - (i) takes a residential mortgage loan application; or
 - (ii) offers or negotiates a term of a residential mortgage loan.
 - (b) "Loan originator" does not include:
 - (i) an individual who is engaged solely as a loan processor or underwriter;
 - (ii) unless compensated by a lender, broker, other loan originator, or an agent of a lender, broker, or other loan originator, a person who:
 - (A) only performs real estate brokerage activities; and
 - (B) is licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act;
 - (iii) a person who is solely involved in extension of credit relating to a timeshare plan, as defined in 11 U.S.C. Sec. 101(53D); or
 - (iv) an attorney licensed to practice law in this state who, in the course of the attorney's practice as an attorney, assists a person in obtaining a residential mortgage loan.
- (13) "Loan processor or underwriter" means an individual who as an employee performs clerical or support duties:
- (a) at the direction of and subject to the supervision and instruction of:
 - (i) a licensee; or
 - (ii) a registered loan originator; and
 - (b) as an employee of:
 - (i) the licensee; or
 - (ii) a registered loan originator.
- (14) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry, authorized under Secure and Fair Enforcement for Mortgage Licensing, 12 U.S.C. Sec. 5101 et seq.
- (15) "Nontraditional mortgage product" means a mortgage product other than a 30-year fixed rate mortgage.
- (16) "Owned and controlled by a depository institution" may be defined by rule made by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (17) "Prelicensing education" means education taken by an individual seeking to be licensed under this chapter in order to meet the education requirements imposed by Section 70D-3-301 for an individual to obtain a license under this chapter.
- (18) "Registered loan originator" means an individual who:
- (a) engages in an act as a loan originator only as an employee of:
 - (i) a depository institution;
 - (ii) a covered subsidiary; or
 - (iii) an institution regulated by the Farm Credit Administration; and
 - (b) is registered with, and maintains a unique identifier through, the nationwide database.
- (19)
- (a) Subject to Subsection (19)(b), "residential mortgage loan" means:
 - (i) a mortgage loan; or
 - (ii) a loan that is:
 - (A) secured by a mortgage; and

- (B) subject to Title 70C, Utah Consumer Credit Code.
- (b) A loan described in Subsection (19)(a) is a "residential mortgage loan" only if the mortgage securing the loan is on:
 - (i) a dwelling located in the state; or
 - (ii) real property located in the state, upon which is constructed or intended to be constructed a dwelling.
- (20) "Unique identifier" is as defined in 12 U.S.C. Sec. 5102.

Amended by Chapter 97, 2014 General Session

70D-3-103 General powers and duties of commissioner.

Subject to this chapter:

- (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may make rules authorized by this chapter, including:
 - (a) providing for an interim procedure for:
 - (i) licensing; and
 - (ii) acceptance of an application; and
 - (b) coordination between filings required under this chapter and:
 - (i) Title 70C, Utah Consumer Credit Code; or
 - (ii) Chapter 2, Mortgage Lending and Servicing Act.
- (2) The commissioner may enter into a relationship or contract with the nationwide database or another entity designated by the nationwide database to do the following related to a licensee or other person subject to this chapter:
 - (a) collect or maintain a record; and
 - (b) process a transaction fee or other fee.
- (3) The commissioner shall regularly report the following to the nationwide database:
 - (a) a violation of this chapter;
 - (b) disciplinary action under Section 70D-3-501; and
 - (c) other information relevant to this chapter.

Enacted by Chapter 72, 2009 General Session

Part 2
Licensing Requirements and Procedures

70D-3-201 Licensing required -- Exemptions.

- (1)
 - (a) On or after January 1, 2011, except as provided in Subsection (2), an individual described in Subsection (1)(b) may not engage in the business of a loan originator unless that individual:
 - (i) is licensed under this chapter; or
 - (ii) is a registered loan originator.
 - (b) This Subsection (1) applies to an employee or agent of:
 - (i) a depository institution;
 - (ii) a subsidiary of a depository institution; or
 - (iii) an affiliate of a depository institution.

- (2) An individual described in Subsection (1)(b) may engage in the business of a loan originator without being licensed under this chapter or a registered loan originator when acting as a loan processor or underwriter.

Enacted by Chapter 72, 2009 General Session

70D-3-202 Qualifications for licensure.

To qualify for a license under this chapter an individual shall comply with all of the following, the individual:

- (1) shall comply with 12 U.S.C. Sec. 5104 to register with and maintain a unique identifier through the nationwide database;
- (2) may not have had a loan originator license revoked in a governmental jurisdiction;
- (3) may not have been convicted of, or pled guilty or no contest to, a felony:
 - (a) during the seven years preceding the day on which the individual files an application; or
 - (b) at any time, if the felony involves an act of:
 - (i) fraud;
 - (ii) dishonesty;
 - (iii) breach of trust; or
 - (iv) money laundering;
- (4) shall demonstrate financial responsibility, character, and general fitness such as to:
 - (a) command the confidence of the community; and
 - (b) warrant a determination that the individual will operate as a loan originator honestly, fairly, and efficiently within the purposes of this chapter;
- (5) shall be covered by a surety bond posted in accordance with Section 70D-3-205;
- (6) shall complete the prelicensing education required by Section 70D-3-301; and
- (7) shall pass the written examination required by Section 70D-3-302.

Enacted by Chapter 72, 2009 General Session

70D-3-203 Initial licensure procedure.

- (1) To apply for licensure under this chapter an individual shall:
 - (a) file an application with the commissioner in a form prescribed by the commissioner in rule;
 - (b) demonstrate that the individual provided the information to the nationwide database required by 12 U.S.C. Sec. 5104;
 - (c) provide the commissioner the individual's unique identifier;
 - (d) consent to the commissioner receiving information obtained by the nationwide database under 12 U.S.C. Sec. 5104, including the results of a criminal history background check; and
 - (e) notwithstanding the requirements applicable to a regulatory fee under Section 63J-1-504, pay a fee of \$200.
- (2) The commissioner shall grant an individual a license if the commissioner finds that the individual complies with:
 - (a) Subsection (1); and
 - (b) the qualifications for a license under Section 70D-3-202.
- (3) Subject to this chapter, the commissioner may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, concerning:
 - (a) the form of an application under this chapter;
 - (b) the content of an application under this chapter; and
 - (c) the procedures for filing an application under this chapter.

Enacted by Chapter 72, 2009 General Session

70D-3-204 Renewal of license.

- (1) A license issued under this chapter expires on December 31 of each year.
- (2) To qualify to renew a license under this chapter an individual shall:
 - (a) meet the requirements of Section 70D-3-202; and
 - (b) complete the annual continuing education requirements of Section 70D-3-303.
- (3) To renew a license under this chapter an individual shall:
 - (a) file an application with the commissioner in a form prescribed by the commissioner in rule;
 - (b) demonstrate that the individual continues to meet the requirements related to the nationwide database under 12 U.S.C. Sec. 5104;
 - (c) demonstrate completion of the continuing education requirements; and
 - (d) notwithstanding the requirements applicable to a regulatory fee under Section 63J-1-504, pay a fee of \$100.

Enacted by Chapter 72, 2009 General Session

70D-3-205 Surety bond requirements.

- (1)
 - (a) To be licensed under this chapter an individual shall be covered by a surety bond that meets the minimum surety bonding requirements required by rule.
 - (b) If an action is brought against a bond under this chapter, the commissioner may require that another bond be posted.
- (2) The commissioner shall by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish minimum surety bonding requirements under this section, except that the requirements shall:
 - (a) reflect the dollar amount of residential mortgage loans originated by a loan originator; and
 - (b) ensure that if in accordance with this chapter a surety bond is posted by an employer or other entity on behalf of an individual, the bond covers the activities of the individual regulated by this chapter.

Enacted by Chapter 72, 2009 General Session

70D-3-206 Challenging information in the nationwide database.

The commissioner shall by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide a process under which an individual may challenge information contained in the nationwide database.

Enacted by Chapter 72, 2009 General Session

**Part 3
Education Requirements**

70D-3-301 Prelicensing education.

(1) Before an individual may be licensed under this chapter, the individual shall complete the number of hours of prelicensing education required by rule made by the commissioner.

- (2)
- (a) The commissioner shall make the rules described in Subsection (1):
 - (i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
 - (ii) subject to the requirements of this Subsection (2).
 - (b) The rules described in Subsection (1) shall require that an individual complete:
 - (i) at least 20 hours of prelicensing education approved by the nationwide database; and
 - (ii) as part of the 20 hours required by Subsection (2)(b)(i):
 - (A) 3 hours of federal law and regulations;
 - (B) 3 hours of ethics that include instruction on:
 - (I) fraud;
 - (II) consumer protection; and
 - (III) fair lending issues; and
 - (C) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

Enacted by Chapter 72, 2009 General Session

70D-3-302 Examination.

- (1) Before an individual may be licensed under this chapter, the individual shall pass a written examination that:
- (a) meets the requirements of 12 U.S.C. Sec. 5104(d);
 - (b) is developed by the nationwide database; and
 - (c) is administered by an approved examination provider.
- (2) The commissioner shall make rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:
- (a) require that an individual comply at a minimum with the standards of 12 U.S.C. Sec. 5104(d); and
 - (b) address:
 - (i) what constitutes passing a written examination;
 - (ii) the ability of an individual to retake a written examination if the individual fails the written examination; and
 - (iii) when an individual is required to retake a written examination if an individual fails to maintain a valid license under this chapter after taking the written examination.

Enacted by Chapter 72, 2009 General Session

70D-3-303 Continuing education.

- (1) A licensee shall annually complete at least the number of hours of continuing education required by rule made by the commissioner.
- (2)
- (a) The commissioner shall make the rules described in Subsection (1):
 - (i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
 - (ii) subject to the requirements of this Subsection (2).
 - (b) The rules described in Subsection (1) shall require that an individual complete each calendar year:
 - (i) eight hours of continuing education approved by the nationwide database;

- (ii) as part of the eight hours required by Subsection (2)(b)(i):
 - (A) three hours of federal law and regulations; and
 - (B) two hours of ethics that include instruction on:
 - (I) fraud;
 - (II) consumer protection; and
 - (III) fair lending issues; and
 - (iii) two hours of training related to lending standards for the nontraditional mortgage product marketplace.
- (3) The commissioner shall by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the calculation of continuing education hours, except that the rules shall be consistent with 12 U.S.C. Sec. 5105.

Enacted by Chapter 72, 2009 General Session

Part 4

Operational Requirements and Prohibitions

70D-3-401 Record requirements -- Reports of condition.

- (1) An individual required to be licensed under this chapter shall create a record required by rule made by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (2) An individual required to be licensed under this chapter shall maintain and produce for inspection a record required to be maintained by a rule made by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for four years from the last to occur of the following:
 - (a) the final entry on a residential mortgage loan is made by that licensee;
 - (b) if the residential mortgage loan is serviced by the licensee:
 - (i) the residential mortgage loan is paid in full; or
 - (ii) the licensee ceases to service the residential mortgage loan; or
 - (c) if the residential mortgage loan is not serviced by the licensee, the residential mortgage loan is closed.
- (3) An individual required to be licensed under this chapter shall maintain and produce for inspection by the commissioner a report of condition submitted to the nationwide database as required by 12 U.S.C. Sec. 5104(e) for at least four years from the day on which the individual submits the report of condition to the nationwide database.

Enacted by Chapter 72, 2009 General Session

70D-3-402 Prohibited acts.

- (1) An individual transacting the business of a loan originator in this state may not:
 - (a) violate or not comply with:
 - (i) this chapter;
 - (ii) an order of the commissioner under this chapter;
 - (iii) a rule made by the commissioner under this chapter;
 - (iv) Title 70C, Utah Consumer Credit Code, if subject to that title; or
 - (v) Chapter 2, Mortgage Lending and Servicing Act, if subject to that chapter;

- (b) engage in an act that is performed to:
 - (i) evade this chapter; or
 - (ii) assist another person to evade this chapter;
 - (c) do any of the following to induce a lender to extend credit as part of a residential mortgage loan transaction:
 - (i) make a false statement or representation;
 - (ii) cause a false document to be generated; or
 - (iii) knowingly permit false information to be submitted by a person in a transaction;
 - (d) fail to respond within the required time period to:
 - (i) a notice or complaint of the commissioner; or
 - (ii) a request for information from the commissioner;
 - (e) make a false representation to the commissioner, including in a licensure application;
 - (f) engage in the business of a loan originator with respect to a residential mortgage loan transaction if the individual also acts in any of the following capacities with respect to the same residential mortgage loan transaction:
 - (i) appraiser;
 - (ii) escrow agent;
 - (iii) real estate agent;
 - (iv) general contractor; or
 - (v) title insurance agent;
 - (g) engage in an act or omission in transacting the business of a loan originator that constitutes dishonesty, fraud, or misrepresentation;
 - (h) engage in false or misleading advertising;
 - (i)
 - (i) fail to account for money received in connection with a residential mortgage loan;
 - (ii) use money for a different purpose than the purpose for which the money is received; or
 - (iii) subject to Subsection (3), retain money paid for services if the services are not performed;
 - (j) fail, within 90 calendar days of a request from a borrower who has paid for an appraisal, to give a copy of an appraisal ordered and used for a residential mortgage loan to the borrower;
 - (k) recommend or encourage default, delinquency, or continuation of an existing default or delinquency, by a mortgage applicant on an existing indebtedness before the closing of a residential mortgage loan that will refinance all or part of the indebtedness;
 - (l) pay or offer to pay an individual who does not hold a license under this chapter for services that require the individual to hold a license under this chapter; or
 - (m) violate or fail to comply with a provision of Title 57, Chapter 28, Utah Reverse Mortgage Act.
- (2)
- (a) An individual engaging solely in loan processor or underwriter activities, may not represent to the public that the individual can or will perform any act of a loan originator.
 - (b) A representation prohibited under this Subsection (2) includes an advertisement or other means of communicating or providing information including the use of:
 - (i) a business card;
 - (ii) stationery;
 - (iii) a brochure;
 - (iv) a sign;
 - (v) a rate list; or
 - (vi) another promotional item.

- (3) Notwithstanding Subsection (1)(i)(iii), if a licensee complies with Section 70D-2-305, the licensee may charge a reasonable cancellation fee for services completed to originate a residential mortgage loan if the residential mortgage loan is not closed.

Amended by Chapter 290, 2015 General Session

Part 5 Enforcement

70D-3-501 Disciplinary action.

- (1) The commissioner may through an adjudicative proceeding subject to Title 63G, Chapter 4, Administrative Procedures Act, impose a sanction described in Subsection (2) against an individual if the individual:
- (a) is licensed or required to be licensed under this chapter; and
 - (b) violates this chapter.
- (2) The commissioner may against an individual described in Subsection (1) who violates this chapter:
- (a) impose an educational requirement;
 - (b) impose a civil penalty against the individual in an amount not to exceed the greater of:
 - (i) \$2,500 for each violation; or
 - (ii) the amount equal to any gain or economic benefit derived from each violation;
 - (c) deny an application for an initial license;
 - (d) do any of the following to a license under this chapter:
 - (i) suspend;
 - (ii) revoke;
 - (iii) place on probation;
 - (iv) deny renewal;
 - (v) deny reinstatement;
 - (vi) in the case of a denial of a license, set a waiting period for an individual to apply for a license under this chapter; or
 - (vii) issue a cease and desist order; or
 - (e) impose a combination of sanctions described in this Subsection (2).
- (3)
- (a) If the commissioner determines that a practice that the commissioner alleges is unlawful should be enjoined during the pendency of a proceeding incident to an allegation, the commissioner may issue a temporary order in accordance with Section 63G-4-502:
 - (i) at the commencement of the proceedings; or
 - (ii) at any time after the proceeding commences.
 - (b) For purposes of Section 63G-4-502, an immediate and significant danger to the public health, safety, or welfare exists if the commissioner finds from specific facts supported by sworn statement or the records of a person subject to the order that loan applicants or mortgagors are otherwise likely to suffer immediate and irreparable injury, loss, or damage before a proceeding incident to a final order can be completed.

Enacted by Chapter 72, 2009 General Session

70D-3-502 Investigations.

- (1) The commissioner may investigate the actions of:
 - (a) a licensee; or
 - (b) an individual required to be licensed under this chapter.
- (2) In conducting an investigation or adjudicative proceeding, the commissioner may:
 - (a) administer an oath or affirmation under penalty of perjury;
 - (b) subpoena a witness;
 - (c) compel the attendance of a witness;
 - (d) take evidence;
 - (e) require the production of a record or information relevant to an investigation from any person including:
 - (i) the existence, description, nature, custody, condition, and location of a record or other tangible thing of any kind or nature; and
 - (ii) the identity and location of a person having knowledge of a relevant fact or any other matter reasonably calculated to lead to the discovery of admissible evidence; and
 - (f) serve a subpoena.
- (3) A failure to respond to a request by the commissioner in an investigation authorized under this chapter is considered as a separate violation of this chapter, including:
 - (a) failing to respond to a subpoena;
 - (b) withholding evidence; or
 - (c) failing to produce a record or other information.
- (4) In conducting an investigation, the commissioner may inspect and copy a record related to the business of a loan originator, regardless of whether the record is maintained at a business location in Utah.
- (5) Regardless of whether the commissioner takes action pursuant to an investigation under this chapter, an individual investigated under this section shall pay to the commissioner the amounts that would be assessed to a financial institution for an examination under Subsection 7-1-401(7) including:
 - (a) a per diem assessment at the rate calculated under Subsection 7-1-401(7); and
 - (b) if the investigation requires one or more representatives of the commissioner to travel out of state, the reasonable travel, lodging, and other expenses incurred by each representative while conducting the investigation.

Enacted by Chapter 72, 2009 General Session